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Robert W. Barnes, Jr., David C. Barnes, Susan B. Nielson, dba the Barnes Family Partnership v. Richard C. Wood and Marilyn P. Wood, dba Fernwood Candy and Ice Cream Company, a partnership : Petition for Rehearing

Utah Court of Appeals

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Richard D. Burbidge, Esq.; Stephen B. Mitchell, Esq.; Burbidge & Mitchell; Attorneys for Respondents.

J. Michael Hansen, Esq.; Scott F. Young, Esq.; Suttter, Axland, Armstrong & Hanson; Attorneys for Appellants.

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BRIEF

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DOCKET NO. 870483-CA

IN THE UTAH COURT OF APPEALS

ROBERT W. BARNES, JR.,
DAVID C. BARNES, SUSAN B.
NIELSON, dba The Barnes
Family Partnership,

Plaintiffs and
Respondents,

vs.

RICHARD C. WOOD and MARILYN
P. WOOD, dba Fernwood Candy
& Ice Cream Company,
a partnership,

Defendants and
Appellants.

Case No. 870483-CA

RESPONDENTS' PETITION FOR PARTIAL REHEARING

Appeal from a Final Judgment of the
Third Judicial District Court of Salt Lake County,
State of Utah,
Before Judges Billings, Davidson and Garff

RICHARD D. BURBIDGE, Esq.
STEPHEN B. MITCHELL, Esq.
BURBIDGE & MITCHELL
139 East south Temple, #2001
Salt Lake City, Utah 84111
801 + 355-6677
Attorneys for Respondents

J. MICHAEL HANSEN, Esq.
SCOTT F. YOUNG, Esq.
SUITTER, AXLAND, ARMSTRONG & HANSON
700 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101
801 + 532-7300
Attorneys for Appellants

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

ROBERT W. BARNES, JR.,)	
DAVID C. BARNES, SUSAN B.)	
NIELSON, dba The Barnes)	
Family Partnership,)	
)	
Plaintiffs and)	
Respondents,)	
)	
vs.)	Case No. 870483-CA
)	
RICHARD C. WOOD and MARILYN)	
P. WOOD, dba Fernwood Candy)	
& Ice Cream Company,)	
a partnership,)	
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Defendants and)	
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Attorneys for Respondents

J. MICHAEL HANSEN, Esq.
SCOTT F. YOUNG, Esq.
SUITTER, AXLAND, ARMSTRONG & HANSON
700 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101
801 + 532-7300
Attorneys for Appellants

IN THE UTAH COURT OF APPEALS

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Plaintiffs and)	RESPONDENTS' PETITION
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P. WOOD, dba Fernwood Candy)	Case No. 870483-CA
& Ice Cream Company,)	
a partnership,)	
)	
Defendants and)	
Appellants.)	

I. STATEMENT OF POINT OVERLOOKED ON APPEAL

Respondents respectfully submit that their request for attorneys' fees on Appeal as set forth on pages 28 and 29 of Respondents' Reply Brief was overlooked by the Court.

II. ARGUMENT IN SUPPORT OF PETITION FOR PARTIAL REHEARING

As the Court is aware, the parties to this action stipulated that attorneys' fees would be awarded to the prevailing party and that the same could be proven by Affidavits submitted to the Trial Court. That Stipulation was entered into in accordance with the terms of the subject Lease (Addendum C to Brief of Appellants), which provides in pertinent part "The lessor and lessee each agree that should they default in any of the covenants or agreements contained herein, the defaulting

party shall pay all costs and expenses including reasonably attorneys' fees which arise or accrue from enforcing this agreement, whether such enforcement is pursued by filing of suit or otherwise." (Lease Agreement, Para. 14)

Respondents respectfully request the Court to remand the matter to the District Court with instructions to award attorneys' fees incurred by Respondents on Appeal as the District Court finds appropriate and in accordance with the Stipulation of the parties.

III. CERTIFICATION OF COUNSEL

The undersigned counsel for Respondents hereby certifies that this Petition is presented in good faith and not for delay and is brought solely to advise the Court of an issue raised in the Respondents' Brief but not addressed by the Court.

DATED this 24th day of February, 1988.

Respectfully submitted,

BURBIDGE & MITCHELL

By

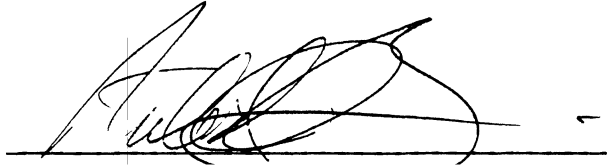

RICHARD D. BURBIDGE

Attorneys for Respondents

MAILING CERTIFICATE

I HEREBY CERTIFY that four (4) copies of the foregoing
was mailed to the following on the 24th day of February, 1988:

J. MICHAEL HANSEN, Esq.
SCOTT F. YOUNG, Esq.
SUITTER, AXLAND, ARMSTRONG & HANSON
700 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101
Attorneys for Appellants

A handwritten signature in black ink, appearing to read "J. Michael Hansen", is written over a horizontal line.

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